

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 USIA-06 AID-05 EB-07 NSC-05

CIEP-01 TRSE-00 SS-15 STR-04 OMB-01 CEA-01 L-03 H-02

PA-01 PRS-01 ERDA-05 CIAE-00 COME-00 DODE-00 FEAE-00

FPC-01 INR-07 INT-05 NSAE-00 PM-04 SAM-01 OES-06

ACDA-07 /101 W

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R 071240Z OCT 76

FM AMEMBASSY QUITO

TO SECSTATE WASHDC 1839

INFO AMCONSUL GUAYAQUIL

C O N F I D E N T I A L SECTION 1 OF 2 QUITO 7236

E.O. 11652: GDS

TAGS: ENRG EINV EC

SUBJ: GOE TAKES OVER ALL PROPERTIES IN ECUADOR OF US COMPANY ESSO  
ANDINA; COMPANY FILES APPEAL CLAIMING LARGE PART OF THE  
TAKEOVER IS ILLEGAL

1. SUMMARY: ON OCT. 4 THE GOE TOOK OVER ALL PROPERTIES IN  
ECUADOR BELONGING TO THE US COMPANY ESSO ANDINA. THE COMPANY  
HAS FILED A PETITION WITH AN APPELLATE BODY ASSERTING THAT THE  
GOE IS LEGALLY ENTITLED TO ONLY SOME OF THESE PROPERTIES,  
AND THAT THE REMAINDER--WHICH THE COMPANY VALUES AT ABOUT  
US\$800,000 TO US\$1 MILLION--HAS IN EFFECT BEEN ILLEGALLY  
EXPROPRIATED WITHOUT COMPENSATION. THE EMBASSY BELIEVES  
THAT THE FACTS AND LEGAL ARGUMENTS PRESENTED BY THE COMPANY  
ARE HIGHLY PERSUASIVE. COMPANY OFFICIALS HAVE TOLD THE  
EMBASSY THAT IF THEY DO NOT OBTAIN SATISFACTION THROUGH THE  
CURRENT APPEAL PROCESS THEY DO NOT (REPEAT NOT) PLAN TO BRING  
SUIT AGAINST THE GOE OR TO PURSUE THEIR CLAIM IN ANY OTHER  
MANNER. THE EMBASSY HAS LEARNED, HOWEVER, THAT THE COMPANY  
MAY IN FACT BE PLANNING TO BRING SUIT AGAINST THE GOE IF THE  
CURRENT APPEAL FAILS. END SUMMARY

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2. IN 1947 THE FIRM ESSO ANDINA (AT THE TIME KNOWN AS THE INTERNATIONAL PETROLEUM COMPANY), A WHOLLY-OWNED SUBSIDIARY OF THE US FIRM EXXON (AT THE TIME KNOWN AS ESSO), SIGNED A CONTRACT WITH A GOE ENTITY UNDER WHICH THE US FIRM WAS GRANTED LAND ON A RENTAL BASIS ADJOINING THE GUAYAQUIL INTERNATIONAL AIRPORT FOR THE PURPOSE OF CONSTRUCTING A "BLUK PLANT" (FOR STORAGE AND PROCESSING) AND OTHER FACILITIES ENABLING THE COMPANY TO SUPPLY FUELS AND LUBRICANTS--MAINLY AVIATION FUELS--TO THE ECUADOREAN AIR FORCE. THIS CONTRACT IS FOR A SIXTY-YEAR DURATION EXPIRING DECEMBER 1, 2006, AT WHICH TIME, ACCORDING TO THE CONTRACT, THE COMPANY IS TO TURN OVER TO THE GOE THE BULK PLANT AND ALL OTHER FACILITIES CONSTRUCTED ON THE RENTED LAND, IN GOOD CONDITION AND AT NO COST TO THE GOE.

3. IN 1956 ESSO ANDINA SIGNED ANOTHER CONTRACT WITH THE GOE, UNDER WHICH THE FIRM WAS GRANTED LANDS ON A RENTAL BASIS AT THE INTERNATIONAL AIRPORT IN GUAYAQUIL AND AT THE INTERNATIONAL AIRPORT IN QUITO FOR THE PURPOSE OF INSTALLING "PIPELINES, TANKS AND BUILDINGS" ENABLING THE COMPANY TO STORE AND SUPPLY FUELS AND LUBRICANTS--AGAIN, MAINLY AVIATION FUELS--TO COMMERCIAL AND MILITARY AIRCRAFT AT THOSE AIRPORTS. THIS CONTRACT WAS FOR A TWENTY-YEAR DURATION EXPIRING OCT 4, 1976, AT WHICH TIME, ACCORDING TO THE CONTRACT, THE COMPANY WAS TO TURN OVER TO THE GOE ALL THE PIPELINES, TANKS AND BUILDINGS ON THOSE SITES, IN GOOD CONDITION AND AT NO COST TO THE GOE.

4. ABOUT ONE YEAR AGO THE THEN MANAGER OF THE ECUADOREAN STATE PETROLEUM CORPORATION (CEPE), COL. RENE VARGAS, OFFICIALLY REMINDED THE COMPANY THAT UPON EXPIRATION OF THE LATTER CONTRACT ON OCT. 4, 1976, THE COMPANY HAD THE OBLIGATION TO TURN OVER THE PIPELINES, TANKS AND BUILDINGS AT THE TWO AIRPORT SITES TO THE GOE, IN GOOD CONDITION AND AT NO COST TO THE GOE. THE COMPANY IN RESPONSE ACKNOWLEDGED THIS OBLIGATION.

5. ON JUNE 30, 1976, THE CURRENT MINISTER OF NATURAL RESOURCES--THE SAME COL. VARGAS WHO WAS FORMERLY THE MANAGER OF CEPE--OFFICIALLY INFORMED THE COMPANY, IN CONFIDENTIAL

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WRITING, THAT UPON EXPIRATION OF THE 1956 CONTRACT THE COMPANY WOULD BE OBLIGED TO TURN OVER TO THE GOE, IN GOOD CONDITION AND AT NO COST TO THE GOE, NOT MERELY THE ABOVEMENTIONED FACILITIES AT THE TWO AIRPORT SITES BUT RATHER "THE TOTALITY OF ITS PROPERTIES, MACHINERY, INSTALLATIONS, EQUIPMENT AND OTHER GOODS ACQUIRED FOR THE PURPOSE OF RELAIZING ITS OPERATIONS OF RECEIVING, SUPPLYING AND SELLING AVIATION FUELS AND LUBRICANTS, IN FULFILLMENT OF

THE (1956 CONTRACT), AS WELL AS OF ARTICLE 28 OF THE HYDROCARBONS LAW IN FORCE." THIS NOTIFICATION CONTINUED; "MOREOVER, THE ENTIRETY OF THE COMMERCIAL COMPLEX INSTALLED BY THE INTERNATIONAL PETROLEUM CORPORATION IN THE SITES LOCATED NEXT TO THE AIRPORT IN THE CITY OF GUAYAQUIL ARE INTIMATELY LINKED WITH THE OBJECTIVE OF THE COMPLEXES INSTALLED WITHIN THE AIRPORTS OF THE CITIES OF QUITO AND GUAYAQUIL, IN SUCH A WAY THAT THERE WOULD BE NO REASON FOR THE FORMER TO EXIST WITHOUT THE LATTER TWO, AND VICE VERSA, FOR WHICH REASON THE REVERSION IS TOTAL, INDIVISIBLE." THE NOTIFICATION WENT ON TO STIPULATE THAT ABSOLUTELY EVERY KIND OF PROPERTY OWNED BY ESSO ANDINA, INCLUDING THE BULK PLANT, MUST BE TURNED OVER TO THE GOE AT NOT COST TO THE GOE.

6. IN LATE SEPTEMBER THE MANAGER OF ESSO ANDINA (A COLOMBIAN NATIONAL) ACCOMPANIED BY AN EXECUTIVE (ALSO A COLOMBIAN NATION) OF EXXON AFFILIATE LOCATED IN BOGOTA WHICH HAS ADMINISTRATIVE RESPONSIBILITY WITHIN EXXON FOR ESSO ANDINA'S OPERATIONS, CALLED ON THE AMBASSADOR. ALSO PARTICIPATING IN THIS MEETING WERE THE DCM, THE E/C COUNSELOR AND THE PETROLEUM OFFICER. THE VISITORS RECITED THE FACTS OUTLINED IN THE PRECEDING PARAGRAPHS, AND HANDED OVER COPIES OF THE FULL TEXT OF THE 1956 CONTRACT AND OF A PETITION ADDRESSED TO THE "TRIBUNAL OF ADMINISTRATIVE CONFLICT," AN APPELLATE BODY. THE VISITORS SUMMED UP THE ARGUMENTS IN THE PETITION AS FOLLOWS:

A. THE GOE WAS LEGALLY ENTITLED TO TAKE OVER ONLY THE "PIPELINGS, TANKS AND BUILDINGS" CONSTRUCTED AT THE TWO AIRPORT SITES IN ACCORDANCE WITH THE EXPIRING 1956 CONTRACT. THE GOE WAS IN NO WAY LEGALLY ENTITLED TO TAKE OVER ANY OTHER PROPERTIES OF ESSO ANDINA AT THAT  
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SITE, MCUH LESS ANY OF THE COMPANIES' PROPERTIES AT THE SEPARATE SITE RENTED UNDER THE 1947 CONTRACT.

B. OBVIOUSLY, IF THE GOE WERE TO TAKE OVER THE TOTALITY OF THE COMPANY'S PROPERTIES IN ECUADOR, THE COMPANY WOULD BE UNABLE TO FULFILL THE 1947 CONTRACT SIGNED BY THE GOE.

C. LEGALLY, THERE IS NO LINK WHATEVER BETWEEN THE TWO CONTRACTS, OTHER THAN THAT ESSO ANDINA AND THE GOE ARE PARTIES TO BOTH.

D. THE INVOCATION OF ARTICLE 28 OF THE HYDROCARBONS LAW (AS THE BASIS FOR TAKING OVER THE PROPERTIES COVERED BY THE 1947 CONTRACT) IS LEGALLY INADMISSIBLE, BECAUSE THE HYDROCARBONS LAW APPLIES ONLY TO OIL CONCESSIONAIRES WHO EXPLORE

AND/OR EXPLOIT ECUADOREAN OIL DEPOSITS, WHILE ESSO ANDINA  
IS ENGAGED SOLELY IN MARKETING (REPEAT MARKETING) PETROLEUM  
PRODUCTS, WHICH ARE IMPORTED (REPEAT IMPORTED).

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 USIA-06 AID-05 EB-07 NSC-05

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FPC-01 INR-07 INT-05 NSAE-00 PM-04 SAM-01 OES-06

ACDA-07 /101 W

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R 071240Z OCT 76

FM AMEMBASSY QUITO

TO SECSTATE WASHDC 1840

INFO AMCONSUL GUAYAQUIL

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7. THE VISTORS SAID THAT THE PROPERTIES OTHER TNA THOSE  
TRANSFERRABLE TO THE GOE UNDER THE 1956 CONTRACT WERE, IN  
EFFECT, BEING EXPORPRIATED BY THE GOE WITHOUT COMPENSATION.  
THEY ESTIMATED THE VALUE OF THOSE PROPERTIES AT US\$800,000  
TO US\$1 MILLION. THEY SAID THEY WOULD BE FILING THE PETITION  
WITH THE TRIBUNAL OF ADMINISTRATIVE CONFLICTS WITHIN A FEW  
DAYS. UNDER ECUADOREAN LAW, THE FILING OF THE PEITION  
WOULD NOT PREVENT THE GOE FROM TAKING PHYSICAL CONTROL  
OF ALL OF THE COMPANIE'S PROPERTIES ON OCT. 4. THE  
APPELLATE BODY IS OBLIGED TO DELIVER ITS VERDICT WITHIN  
NINETY DAYS OF THE FILING OF THE PETITION, AND IF THE VER-  
DICT IS FAVORABLE TO THE COMPANY, THE GOE MUST RETURN  
TO THE COMPANIES THE ILLEGALLY SEIZED PROPERTIES UPON THE  
HANDING DOWN OF THE VERDICT.

8. THE VISITORS SAID THEY WERE REPORTED IN THE FACTS OF  
THIS CASE TO THE EMBASSY SOLELY AS A COURTESY AT THIS  
STAGE, AND THAT THE EXXON COMPANY WAS NOT PLANNING TO TAKE

ANY ACTION IN PURSUIT OF ITS CALIM OTHER THAN THE FILING  
OF THE PETITION OF APPEAL. THIS IS, THEY SAID, THE COMPANY  
WOULD NOT BRING SUIT AGAINST THE GOE NOR TAKE ANY OTHER  
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ACTION AGAINST THE GOE. THEY SAID ANY SUCH ACTION WAS  
LIKELY TO PROVE COSTLY AND UNPRODUCTIVE. IF THE COMPANY  
LOSES ITS APPEAL CLAIM, THEY CONTINUE, IT WOULD SIMPLY  
CEASE TO OPERATE IN ECUADOR, THOUGH IT WOULD STAND READY  
TO PROVIDE LIMITED REIMBURSABLE TECHNICAL ASSISTANCE TO THE  
GOE UPON ANY AD HOC GOE REQUEST.

9. ACCORDING TO THE ECUADOREAN PRESS ON OCTOBER 5, THE  
GOE DID TAKE OVER ALL OF ESSO ANDINA'S PROPERTIES ON THE  
PREVIOUS DAY.

10. DURING A CONVERSATION (BEING REPORTED BY SEPTTEL) ON  
ANOTHER MATTER (THE GULF CASE) WITH VISITING EXACO  
VP ROBERT SHIELDS ON OCT. 5, HE TOLD THE CHARGE AND  
E/C COUNSELOR THAT HE HAD HAPPENED TO BE IN BOGOTA THE  
PREVIOUS EVENING AND HAD MET WITH THE AMERICAN EXECUTIVE  
WHO HEADS UP THE OFFICE THERE THAT OVERSEES ESSO ANDINA'S  
OPERATIONS. THE EXXON OFFICIAL STRONGLY INDICATED, SHIELDS  
SAID, THAT EXXON IS PLANNING TO BRING SUIT AGAINST THE  
GOE IF SATISFACTION IS NOT OBTAINED THROUGH THE CURRENT  
APPEAL PROCESS. SHIELDS SAID THAT HE (SHIELDS) WOULD  
BE SURPRISED AND HIGHLY DISMAYED IF EXXON FAILED TO DO SO,  
BECAUSE THAT WOULD SET A BAD PRECEDENT WHICH WOULD ONLY  
ENCOURAGE THE GOE TO TAKE FURTHER ILLEGAL ACTIONS AGAINST  
OIL COMPANIES AND OTHER KINDS OF FOREIGN ENTERPRISES IN  
ECUADOR. SHIELDS INDICATED HE WOULD ADVISE HIS FRIEND  
IN BOGOTA THAT EXXON WOULD BE IN BAD ODOR WITH THE US  
BUSINESS COMMUNITY IN ECUADOR AND ELSEWHERE IF EXXON  
FAILS TO PURSUE TO A JUST CONCLUSION ITS CLAIM AGAINST  
THE GOE.

11. SHIELDS COMMENTED HE COULD NOT SEE HOW ESSO ANDIAN  
COULD LOSE ITS CASE IF IT DID GO TO COURT IN ECUADOR.  
EVEN IF THE CLEAR JUSTICE OF THE COMPANY'S CASE DOES NOT  
PROVE COMPELLING TO THE JUDICIARY HERE, HE SAID, THE  
MILITARY REGIME UNDOUBTEDLY REALIZES THAT A PUBLIC BLOW-UP  
OVER THIS MATTER WOULD SORELY HURN ECUADOR'S IMAGE IN THE  
EYES OF ALL FOREIGN INVESTORS, ESPECIALLY WHILE THE GULF  
COMPANY'S SITUATION IS COMPELLING FOREIGN INVESTORS TO  
TAKE A HARD SQUINT AT THE INVESTMENT SITUATION IN ECUADOR.  
THE MILITARY REGIME IS PERFECTLY CAPABLE OF DIRECTING  
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A JUDICIAL-BRANCH COURT IN ECUADOR TO RENDER WHATEVER VERDICT THE REGIME WISHES, SHIELDS NOTED. THE MERE THREAT BY ESSO ANDINA TO GO TO COURT, OR TO OTHERWISE MAKE ITS CHARGES PUBLIC, WOULD PROBABLY PROVE SUFFICIENT TO CAUSE THE GOE TO BACKTRACT FROM ITS PRESENT POSITION AGAINST THE COMPANY, HE ADDED.

12. SHIELDS CONCLUDED BY WONDERING ALOUD WHETHER EXXON'S PROFESSED UNWILLINGNESS TO TAKE STRONG ACTION AGAINST THE GOE MIGHT INDICATE THAT EXXON PLANS TO STEP INTO THE OIL SCENE IN ECUADOR, EITHER AS A SUPPLIER OF TECHNICAL SERVICES IN THE WAKE OF GULF'S DEPARTURE, OR AS A CONCESSIONAIRE FOR OIL EXPLORATION AND EXPLOITATION.

13. ON SEPTEMBER 29 THE EC COUNSELOR BROUGHT THE FACTS AND ARGUMENTS OF ESSO ANDINA'S CASE TO THE ATTENTION OF THE ACTING DIRECTOR GENERAL OF ECONOMIC AFFAIRS AT THE FOREIGN MINISTRY, AND LEFT WITH HIM A COPY OF THE COMPANY'S PETITION. WE PLAN TO TAKE THE SAME ACTION WITH OTHER APPROPRIATE GOE OFFICIALS, IN A SIMILARLY LOW KEY.  
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## Message Attributes

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